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Hearing on the Charitable Deduction

On behalf of The Nature Conservancy, I thank the committee for the opportunity to submit this testimony for the record. This testimony briefly describes the mission of the Conservancy; why a cap or limitation on deductions would hurt our mission and those of similar organizations; and why the tax provisions regarding charitable donations of conservation easements on land are of particular benefit to conservation and should be extended and ultimately made permanent.

The Nature Conservancy is a 501(c) (3) publicly-supported charity, whose mission is “to conserve the lands and waters on which all life depends.” We operate in all 50 states and more than 35 foreign countries. One million members support our mission. While we are active in many aspects of conservation, it is probably still true that the Conservancy is best known for acquiring land or conservation easements on land from willing owners by purchase or donation, to preserve it. We own over one million acres in the United States and have been involved in the conservation of many millions more. We currently hold over 2,300 conservation easements covering more than 2.8 million acres in the United States. We work cooperatively with private landowners, with the Land Trust Alliance, and with many local land trusts. Our first conservation easement was near Mystic, Connecticut, for just 6 acres in 1961. Our largest to date was for the Gray Ranch in New Mexico, in 1994 for over 201,000 acres. Sometimes, lands that we have acquired (to preserve them against a threat to their conservation values) are transferred on to a private conservation buyer, land trust, or public agency, under conservation agreements that ensure the continued protection of the property. Such agreements often include arrangements to ensure the continued productive use of such properties as ranches and farms.

As the Committee is aware, conservation easements are interests in land specifically enabled by state laws. These interests in land retire development rights to protect natural, scenic or historic resources on those lands. In the 1970's, Congress specifically enabled tax deductions for such gifts in the tax code. The special benefits for donations of easements are not yet a permanent part of the tax code, but were extended to the end of 2013 as part of the recent 'fiscal cliff' legislation. To continue these benefits and ultimately make them permanent is especially important to land conservation in the United States. Such donations of conservation easements are often very valuable gifts --- gifts that can greatly exceed the annual income of typical donors and so the recent extended special tax benefits are very important to 'land rich-cash poor' landowners. Nationally, in 2009 the average value of a charitable gift of appreciated stock was about \$42,000. The average value of a gift of land, whether for conservation or for any other charitable purpose, was about \$170,000. The average value of a conservation easement was \$460,000 and covered an average area of 300 acres. I am indebted to the Land Trust Alliance and the Internal Revenue Service for these figures.

Such donations protect watersheds for communities, outdoor space for people, scenic beauty, and habitat for wildlife. And, when the land in question includes working ranches or farms, easements help protect our food supply, the ultimate necessity for human life and one that – despite its transcendent value – often cannot compete in short-term economic terms against real estate development.

The use of voluntary conservation easements is good for the land and the people. It is also good for the farmers and the ranchers. The donation or partial donation of an easement frequently is what saves the family property, faced with a need for funds to settle an estate or other urgent cause.

Here are some examples of how conservation easements on land can work:

- The 12,000 acre Crawford Ranch in Montana along the Teton River contains important habitat for endangered plant species and birds, and a high density of seasonal grizzly bears. The ranch is protected by a mixture of investments from the Land and Water Conservation Fund, private philanthropy, and a donated easement by the landowner.
- At the Eagle Ridge Ranch in Wyoming, owners Oliver and Deborah Scott donated a conservation easement on 8,559 acres to the Conservancy, protecting important bird habitat. The family still owns and manages the ranch to raise

cattle. The Conservancy holds easements on a total of 286,295 acres in Wyoming, protecting the land while keeping it in productive private ownership.

A cap on donations? Among the tax reform ideas being considered in various circles is a cap on deductions. One such proposal had been to limit tax deductions to \$17,000, \$25,000, or some similar figure, per year. But taxpayers who itemize have other deductions that they are nearly certain to take first, like mortgage interest, state and local taxes. A cap on deductions would leave little ‘space’ under the cap for charitable deductions, especially not for large ones like the typical conservation easement. We have many years of experience with easement donors including owners of important conservation lands. We know that the tax deduction is rarely if ever the largest motivating factor for donations of easements – it is, rather, critical support for the cause. The experience of other conservation organizations and other good causes is similar.

But, without the ability to deduct donations, many donors would simply be unable to give as much. The total effect would depend on the size and nature of any cap, but it would surely damage the ability of a wide range of charities, including our own, to carry out their work. A time like this, when public resources are harder and harder to find, is not a good moment to remove incentives for the donations that enable private charity. Donations are a leveraged, efficient tool for conservation and other charitable causes.

Conservation easement provisions are an especially vulnerable case of the charitable deduction. These donations are typically once-in-a lifetime events for families of landowners. Only the wealthiest and most committed would be able to donate an easement, if the special provisions for donations of easements did not exist. Many donors are not rich. Their land may have great value, but they can access that wealth only by selling a property that may have been in their family hands for generations. When they sell, often the highest price will be for some form of development that precludes continued use for farm, ranch, or forest.

The tax code generally provides a limit on tax deductions for donations of property of 30% of the taxpayer’s Adjusted Gross Income, with a carryover of donations in excess of that limit for an additional five years past the year of donation. But a farmer, earning perhaps \$50,000 of AGI in a good year, may own land that could be sold for a million dollars or more. If he wishes to donate a \$1 million easement to protect his farm or ranch permanently, while keeping it in the family and productive, he would normally be able to deduct only \$15,000 per year for six years, or \$90,000 total. His cash after-tax benefit from those deductions would of course be even smaller. This is

too expensive for landowners of modest means. They are unable to make such a gift even if they sincerely wish to preserve their lands.

But the special provisions for gifts of conservation easements can make the gift possible. Since 2006 and recently extended through the end of 2013, provisions sponsored by Senators Max Baucus (D-MT) and Charles Grassley (R-IA) allow conservation easement donors to deduct 50% of their AGI and carry over their deductions for 15 years instead of 5. That would enable the family referred to above to deduct a maximum of \$400,000 over 16 years instead of \$90,000. In addition, if the donor's income was primarily from ranching, farming, or forestry – as is often the case -- it allows them to deduct 100% of their AGI, doubling the amount they could deduct over 16 years. This makes conservation by private initiative widely possible. It has been estimated that these provisions of tax law have enabled half a million additional acres per year on the average since 2006. And, they save family farms.

Landowners need certainty to make and carry out their plans. Last year, the special provisions for conservation easements had expired, and as a result many landowners are believed to have delayed their planned donations. The 'extenders' package that restored these provisions did not become law until the 2012 year was over. Now, we expect to see an increase in donations of conservation easements in 2013. It would help the cause of conservation, the security of America's food supply, and the maintenance of family farms and ranches, if these provisions could be made permanent so that a similar gap does not occur in 2014 or later.

On behalf of the conservancy, I thank each of the Members of the Committee and the Congress who cosponsored The Conservation Easement Incentive Act in the last Congress to make this provision permanent, and particularly Representatives Jim Gerlach (R-PA) and Mike Thompson (D-CA), who were the principal authors of the legislation in the House. Their bill, HR 1964, had 311 members signed on as sponsors, including a majority of both parties, and both Chairman Dave Camp and Ranking Member Sander Levin. We urge the Committee and the Congress to move ahead with the re-introduction of a similar measure in the current Congress, to make the conservation easement provisions permanent. And we urge the Committee to remember, as it considers a wide range of options for tax reform in the coming years, the high value to our country of the charitable deduction.

Thank you for the opportunity to present this written testimony.